IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1784 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -

2. To be referred to the Reporter or not? -

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3. Whether Their Lordships wish to see the fair copy of the judgement? -

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge? -

DARSHAN PROCESSORS

Versus

FULCHAND RAMSAWAR GOD

Appearance:

MR DG SHUKLA FOR NANAVATI & NANAVATI for Petitioner

MR VM TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 10/02/99

ORAL JUDGEMENT

By means of this petition, the petitioner sought for quashing the order dated 30-10-1985 passed by the Industrial Tribunal, Ahmedabad in Appeal (IC) No. 212/84.

2. The respondent no. 1 was working in the petitioner's mill since 2-4-1977 as a Printer on permanent post. The respondent no. 1 was sanctioned leave from 14-3-1979 to 15-4-1979 and he had gone to his

native place Allahabad. According to the respondent no.1, he was sick on 12-4-1979. So, he sent a letter to the petitioner on 13-4-1979 praying for extension of his leave upto 29-4-1979. Along with that application he had also sent the medical certificate. But his request was refused and the petitioner informed the respondent no. 1 by a letter dated 18-4-1979 that his leave cannot be granted and he should resume his duties on expiry of his leave, failing which it would be presumed that he has no interest for doing the work and his name will be cancelled. That letter was received by the respondent no. 1 on or about 23-4-1979. As the respondent no. 1 was not knowing Gujarati language he presumed that his leave has already been extended and he proceeded to Surat on 28-4-1979 to resume his duty on 30-4-1979. When he reached in the mill one Ramchandrabhai Sheth, partner of the mill was present in the mill who refused to keep him in service. Thereafter, he made one or two attempts to resume his duty but he was not allowed for the same. He sent the letter of request on 8-6-1979 to the petitioner stating therein that the step of terminating his service from 30-4-1979 without assigning any reason is illegal, improper and unjust and he should be reinstated in service with full back wages. The respondent no.1 workman filed an application bearing T Application No. No. 505 of 1979 in the Labour Court, Surat contending that termination of his service without any reason and without making any payment of amount payable to him according to the law from 30-4-1979 was illegal, arbitrary and against the principles of natural justice. He prayed for declaration that the step of terminating his service is illegal, unjust and against the principle of natural justice and the respondent no.1 - workman be ordered to be reinstated on his original post with full back wages.

3. The petitioner stated in his written reply that the respondent no. 1 - workman had gone to his native place on the sanctioning of leave from 15-3-1979 to 15-4-1979 and he was required to resume his duty on 16-4-1979. But he had sent his letter on 12-4-1979 requesting for extension of his leave. But that request of the respondent no. 1 - workman was rejected by the letter dated 18-4-1979 and he was directed to resume his duty. However, he had not resumed his duty till 1-6-1979 so his name was cancelled from the muster role on 1-6-1979.

4. Both the parties lead their evidence before the Labour Court, Surat and after hearing both the parties, the Labour Court, Surat dismissed the application of the

respondent no.1 - workman by the order dated 15-10-1984. The workman preferred Appeal No. I.C. No. 212/84 before the Industrial Court, Ahmedabad. The Industrial Court, Ahmedabad allowed the appeal and set aside the order of the Labour Court and the petitioner - mill was directed to reinstate the respondent no. 1 workman on his original post with all the benefits treating his service as continuous and to pay back wages from 1-5-79 till the respondent no. 1 workman is reinstated and the petitioner mill was directed to pay the workman Rs. 500/- towards the costs of the Labour Court, Surat as well as Industrial Court, Ahmedabad by the order dated 30-10-1985.

5. The petitioner has filed the affidavit and also additional affidavit stating therein that the printing department of the petitioner's mill was closed on 30-6-1983. Hence, the respondent no. 1 - workman is not entitled for any wages and reinstatement after 30-6-1983 and the employees working in this department were informed by the notice dated 29-5-1983. It is also stated in the additional affidavit that there were 33 employees working in this department and on account of closure of this department their services were terminated and they were paid all their legal dues including retrenchment compensation and gratuity and later on the machineries of printing table along with other machineries were disposed of in 1988.

6. Heard learned counsel for the parties and perused the relevant record.

7. Learned counsel for the petitioner contended that the appellate authority has observed in its judgment that it is an admitted fact that after 30-4-1979 the workman respondent no. 1 has not given any notice to the mill upto 5-6-1979. As per standing order his services stand automatically terminated. Even then the appellant authority has recorded the finding that the respondent no. 1 - workman approached the mill authority on 30-4-1979 and Shri Ramchandrabhai refused to take him in service. In this connection, the learned counsel for the petitioner relied on the decision of the Supreme Court in the case of National Engineering Industries Ltd. Vs. Hanuman, reported in AIR 1968 33, wherein it is held "Where a standing order provides that a workman would lose lien on his appointment, if he does not join duty within certain time after his leave expires it only means that his service stands automatically terminated when the contingency happens."

8. Learned counsel for the petitioner further relied on the case of Backingham and Carnatic Co. Ltd. Vs. Venkatiah, reported in AIR 1964 MADRAS 1272, wherein it is held "Where termination of the employee's service follows automatically either from a contract or from a Standing Order by virtue of the employee's absence without leave for the specified period, such termination is not the result of any positive act or order on the part of the employer, and so, to such a termination the prohibition contained in Sec. 73 (1) would be inapplicable."

9. Learned counsel for the petitioner also challenges the other findings recorded by the appellate authority as based on erroneous presumptions and inferences and not sustainable in the eye of law. Learned counsel for the petitioner submitted that the appeal preferred by the respondent no. 1 was barred by limitation prescribed therefor and the appellate authority should not have entertained the same. In this respect, in order to ascertain whether the respondent no. 1 has applied for a certified copy of the judgment and order of the Labour Court, the record of the appeal was summoned and it is found from the record that the appeal was filed on 7-12-1984 and the certified copy of the judgment was ready on 15-10-1984 and it was delivered and received by the respondent no. 1 - workman on 13-11-1984. From the record there is nothing to show that any application u/s 5 of the Limitation Act for condonation of delay caused in filing the appeal was moved and delay was condoned. The appeal was to be filed within 30 days. But the appeal has been filed on 7-12-1984 which is delayed by 23 days. Thus, the appeal is barred by limitation and even though it has been entertained and decided without having condoned the delay in filing the ppeal. As such the appeal was not entertainable and the appellate authority committed serious error on the face of the record.

10. Learned counsel for the petitioner further submitted that the order of the appellant authority is not sustainable in the eye of law in respect of the back wages as the respondent no. 1 - workman was working as printer and it cannot be assumed that he had not worked anywhere from the 1-5-1979 till today. The respondent no. 1 - workman was not a Class-I or Class-II employee. So suitable employment was not be available to him. But the respondent no. 1 - workman was Class-IV employee and he must have worked and earned livelihood by employing himself in any other establishments or worked on contract basis with some other person. It is no doubt that the

respondent workman has admitted in his deposition before the Labour court that he has made an attempt to get job after he was discharged from the mill but he could not get the job. It appears that he was searching job of printing, such work might not be available elsewhere. But he was a Class-IV employee who is like a labourer, he must have worked somewhere as labourer. There is nothing on the record to show that he remained without work since 1-5-1979. As such, the appellate authority was not justified in allowing the back wages from the date of his discharge from the mill.

11. I have considered this argument carefully and came to the conclusion that the appellate authority was not justified at all in granting back wages from 1-5-1979 as the respondent no. 1 - workman was just like a labourer it cannot be assumed that he had not found alternative work any where and he was dependent upon the other members of his family and there is nothing on record to show that he remained unemployed from the date 1-5-1979. Even it is assumed that the findings recorded by the appellate authority are perverse it would be difficult for this Court to reverse the same without strong sufficient reasons. But the fact remains that the respondent - workman has not given any notice upto 5-6-1979 and it is doubtful whether he had went to the Managing Director of the Mill on 30-4-1979 and made attempt to resume his duties. In case, he was not allowed by the mill to resume duty on 30-4-1979 the respondent no. 1 workman could have approached to the Union Leader and he could have taken necessary action against the mill. But he has not done anything. On the basis of the assertions made in the additional affidavit filed by the petitioner, it is clear that the department in which the respondent no. 1 workman was working was closed with effect from 30-6-1983 and hence the respondent no. 1 could not have been allowed to be in continuous service after 30-6-1983 and the assertions made in the affidavit-in-reply have not been controverted by the respondent no. 1 - workman by filing counter affidavit inspite of sufficient time has been granted by several adjournments.

12. Considering the peculiar facts and circumstances of the case, though the appeal of the respondent no. 1 workman before the appellate authority was not tenable and the order of the Industrial Court regarding back wages is not sustainable. The respondent no. 1 workman was in legal service before his discharge from the petitioner - mill and the respondent no. 1 workman was entitled for legal dues either in respect of his payment

or in respect of retrenchment amount or exgratia amount. This Court thinks it fit and proper that if the respondent - workman is paid Rs. 15,000/- as exgratia compensation, it would meet the ends of justice.

13. Accordingly, the petition is allowed in part and the impugned order of the Industrial Court dated 30-10-1985 is quashed and set aside and the petitioner mill is directed to pay the amount of Rs. 15,000/- t3o the respondent no. 1 - workman by way of compensations towards final dues and claim.

14, Learned counsel for the petitioner informed the Court that the petitioner has deposited Rs.23,968-12 ps. in this Court on 1-7-1986 and Rs.4000/- on 4-8-1986 and these amounts are lying with this Court. The respondent no. 1 - workman is directed to withdraw the amount of Rs. 15,000/- (Rupees fifteen thousand only). The petitioner is permitted to receive the rest of the amount along with interest, if any.

14. Accordingly, rule is made absolute to the aforesaid extent, with no order as to costs. Interim order, if any, stands vacated.

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/JVSatwara/